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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,671	10/05/2001	Satoshi Hikai	214668US3	1997

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EXAMINER

MCDERMOTT, KEVIN

ART UNIT PAPER NUMBER

3635

DATE MAILED: 01/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/970,671

Applicant(s)

HIKAI, SATOSHI

Examiner

Kevin McDermott

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,9-11 and 13 is/are pending in the application.
- 4a) Of the above claim(s) 6-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,9-11 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Allowable Subject Matter***

The August 14, 2003 Office Action noted that claims 1-5 would be allowable if rewritten or amended to overcome the rejections under 35 U.S.C. sec. 112, second paragraph, and that claim 10 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Unfortunately, Examiner must notify the Applicant that because these claims do not contain allowable subject matter the indication of allowable subject matter is hereby withdrawn.

All claims are rejected as detailed below.

### ***Claim Objections***

Claims 3, 11, and 13 are objected to because of the following informalities:

Regarding claim 3, lines 3-4 recite "substantially the same thickness as at least a spaced distance between said siding board and said furring strip". Examiner has interpreted "thickness" as being the depth of the spacer, not the thickness of the metal. Examiner suggests amending claim 3 to clarify this issue.

Regarding claims 11 and 13, their respective lines 2 recite "portion". It appears that this should be corrected to "portions". For claim 13, this is the first occurrence of "portion".

Regarding claims 11 and 13, their respective lines 3 recite "slantly". It appears that this should be corrected to "slightly".

Appropriate correction is required.

***Double Patenting***

Claims 9 and 11 were rejected under Double Patenting in the August 8, 2003 Office Action, but Applicant's November 6, 2003 Amendment did not directly address this issue. Applicant's amendment changed claims 9 and 11 to differentiate over the applied art, and in so doing also negated the Double Patenting rejection.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese application publication number 09-302889 to Uota.

Uota discloses in figures 1-7 and in the abstract, a fastening metal fitting formed out of a basic plate 1 along a wall bed face W. The metal fitting comprises a wall plate support part 2 extended at a right angle from the basic plate 1, a wall plate latching claw 3 formed by bending a tip of the wall plate support part 2, and a riblike projection 4. When a wall plate B is fixed by the fastening metal fitting, the latching claw 3 is engaged with an engaging groove B1 at an upper end of the wall plate B along the wall bed face W, and the basic plate 1 is fixed on the wall bed face W by driving nails. Furthermore, the riblike projection 4 extended downward is provided on a rear surface of the wall plate B to form a vent space S between the wall bed face W and the rear surface of the

wall plate B by the riblike projection 4. Consequently, it is possible to prevent the occurrence of mold in a rear surface part of a column owing to the vent space.

The basic plate 1 is the claimed starter fitting having a base plate portion. The wall plate support part 2 is the claimed supporting portion and the riblike projections 4 are the claimed spacing portions formed at left and right portions of the basic plate 1 and having a cross-sectional shape of a squarish letter "U". Latching claw 3 is the claimed engaging end portion and is bent upward.

Because Uota discloses all the claimed structural limitations, it is inherently capable of being used in the same way as the claimed invention.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uota in view of Japanese application publication number 2001-123546 to Daimon and further in view of Ball.

Uota's disclosure is discussed above. Additionally, figures 1 and 5 of Uota disclose the riblike projections 4 extending lower than the position of the supporting portion 2.

However Uota does not disclose disposing the metal fitting in a lowest portion of a building for supporting the lowest siding board in the lowest portion, disposing the

metal fitting on a furring strip, supporting the lowest board on the support 2, disposing ground sill flashing adjacent a lower portion of the lowest siding board, and making riblike projections 4 of Uota substantially the same thickness as at least a spaced distance between the siding board and the furring strip.

Daimon discloses in figure 1 and in the abstract, a throating material 2 arranged in the neighborhood of the outer wall material 1. The throating inclined piece 3 inclined downward is provided on the throating material 2 so as to be downward of the edge projected outward from the surface of the outer wall material 1 downward from the lower end of the outer wall material 1. A slender recessed or projected lateral road part 4 is formed on the surface of the throating piece 3. The throating material 2 is fixed to furring strip 11.

Ball discloses in figure 9 and in column 6, lines 7-15, flashing 12 extending downward from subfloor 21 and being disposed adjacent the lower portion of the lowest siding board 29.

By disposing the base plate 1 of Uota against the furring strip, the riblike projections 4 of Uota would be disposed between the siding board and the furring strip. So, the riblike projections 4 would be substantially the same thickness as at least a spaced distance between the siding board and furring strip.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Uota by: locating the metal fitting of Uota in a lowest portion of a building for supporting the lowest siding board in the lowest portion of the building; providing a furring strip for disposing the metal fitting of Uota thereon;

disposing flashing adjacent the lower portion of the lowest siding board; and, making the riblike projections 4 of Uota substantially the same thickness as at least a spaced distance between the siding board and the furring strip.

One of ordinary skill would have been motivated to make such modifications to adequately support the lowest siding board and to create a vent space to prevent the development of mold behind the siding. Additionally, one of ordinary skill would provide flashing to prevent water that gets behind the siding from entering the building.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Uota in view of Daimon and Ball, and further in view of Ito.

The disclosures of Uota, Daimon, and Ball are discussed above. However, neither of these references discloses a metal fitting disposed in a corner portion of a building and having a first corner base plate and a second corner base plate which are substantially perpendicular to each other between spacing portions formed at the left and right end portions of the base portion, and wherein each corner base plate has a supporting portion.

Ito discloses in figures 1 and 5 and in the abstract, a panel support fixture 11 having double surface base panel parts 12,13 bent by an angle of about 90 degrees, made into contact with a corner part composed of an outer surface of a base pillar 3 and one of side surfaces, the based panel part 13 is fixed to the inside of a building with the use of screws, nails or the like. End edge parts of upper and lower panels 1, 1 are fitted in fitting parts 17, 18 in the opposite sides of the support pieces 16 of a panel support fitting 11.

The panel support fixture 11 is the claimed starter fitting having base plate portions, wherein each base plate portion has a planar rear side surface configured to be disposed in a corner portion of a building. The fitting parts 17, 18 are the claimed supporting portions bent forward from the base plate portions 12, 13. Additionally, the fitting parts 17, 18 have end engaging portions bent upwards and downwards. The base plate portion 12 is the claimed first corner base plate, and the base plate portion 13 is the claimed second corner base plate portion.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Uota in view of Daimon and Ball, by providing a metal fitting comprised of first and second corner base plates that are perpendicular to each other between the riblike projections 4 (of Uota), wherein each base plate has a supporting portion, and disposing it in a building corner.

One of ordinary skill would have been motivated to make such modifications to provide a process of attaching a panel, which can easily attach a building material panel or the like to a base pillar, or comparable corner of a building, from the outside.

Claims 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese application publication number 10-183940 to Ito in view of Uota and further in view of Daimon.

Ito discloses in figures 1 and 5 and in the abstract, a panel support fixture 11 having double surface base panel parts 12,13 bent by an angle of about 90 degrees, is made into contact with a corner part composed of an outer surface of a base pillar 3 and one of side surfaces, the based panel part 13 is fixed to the inside of a building with the



use of screws, nails or the like. End edge parts of upper and lower panels 1, 1 are fitted in fitting parts 17, 18 in the opposite sides of the support pieces 16 of a panel support fitting 11.

The base panel parts 12, 13 are the claimed starter fitting having a base plate portion having a planar rear side surface configured to be disposed in a corner portion of a building. The fitting parts 17, 18 are the claimed supporting portions bent forward from the base plate portions 12, 13. Additionally, the fitting parts 17, 18 have end engaging portions bent upwards and downwards. The base plate portion 12 is the claimed first corner base plate, and the base plate portion 13 is the claimed second corner base plate portion.

However, Ito does not disclose "U"-shaped spacing portions formed at left and right end portions of the base plates 12 and 13 or fixing the base plates 12, 13 to furring strips.

Uota's disclosure is discussed above. As discussed, the plate 1 of Uota has riblike projections 4 that have a "U"-shaped cross section. The projections 4 are the claimed spacing portions.

Daimon discloses in figure 3 disposing a throating material 2 on a furring strip 11.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the panel support fixture 11 of Ito so that it included U-shaped spacing portions at the outside edges of the plates 12, 13 and was disposed on a furring strip.

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One of ordinary skill would have been motivated to make such a modification to prevent the occurrence of mold in a rear surface part of a column owing to the vent space.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kevin McDermott, whose telephone number is 703-308-8266.



**BRIAN E. GLESSNER**  
**PATENT EXAMINER**

KM 1/22/04